

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10525 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRAKANT P PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MR AG URAIZEE, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 25/09/96

ORAL JUDGEMENT

The petitioner by this application challenges the order dated 15th July, 1994, passed by the then learned Assistant Collector at Dabhoi, setting aside the order dated 10-12-1993 passed by T.D.O., Vaghodia, granting N.A permission.

2. The case of the petitioner in brief may be stated. With regard to the agricultural lands bearing Survey nos.22 and 23 situated within the local limits of village Pipaliya in Vaghodia Taluka, N.A. permission was sought for the purpose of establishing industry. The

T.D.O. of Vaghodia Taluka, considering the materials before him on 10th December, 1993 granted the permission. Thereafter, the Assistant Collector at Dabhoi preferred to issue a notice on 11th February, 1994 as he thought that the N.A. permission granted by the T.D.O. was not at all legal and he had not considered the relevant issues and factors of the case. After the receipt of the notice, petitioner replied on 28th February, 1994, submitting in short that no mistake was committed by the T.D.O. and the N.A. permission granted was quite in consonance with law. The learned Assistant Collector at Dabhoi then on 15th July, 1994 passed the impugned order invoking Section 211 of the Bombay Land Revenue Code, 1879 and set aside the order passed by the T.D.O. Being aggrieved by the order the present petition has been filed challenging its validity.

3. Mr. A.J. Patel, learned Advocate representing the petitioner submitted that it was beyond the competence of the learned Assistant Collector to issue the notice and pass the impugned order. Under Section 65 of the Bombay Land Revenue Code, the T.D.O. having been delegated with powers passed the order granting N.A. permission. Hence, it was not open to the Asstt. Collector to exercise the powers u/s. 211 of the Bombay Land Revenue Code and set aside the order passed by the T.D.O., Vaghodia.

4. I find force in the submission advanced on behalf of the petitioner. Whenever an owner or occupant of agricultural land wants to make use thereof for the purpose other than agricultural one, he has to apply for N.A. permission and the Collector vested with the power under Section 65 of the Bombay Land Revenue Code has to decide on receipt of the application whether N.A. permission sought for should be granted or refused. The powers vested under Section 65 of the Bombay Land Revenue Code are as made clear in the case of MANIBEN ARVINDLAL VS. STATE, 33 (1) G.L.R. 413 delegated to the T.D.O. He can therefore grant N.A. permission but amount of premium is to be fixed by the Collector or Revenue Officer. In this case as the powers are delegated, the T.D.O. of Vaghodia Taluka on receipt of the application from the petitioner passed the order and granted N.A. permission. Hence, the crucial question that requires to be examined is whether it was open to the Assistant Collector, Dabhoi to review that and set aside the order granting N.A. permission. In that regard, one must look into Section 211 of the Bombay Land Revenue Code. According to that Section, the State Government and any Revenue Officer not inferior in rank to an Assistant or

Deputy Collector, or a Superintendent of Survey, in his respective department may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any decision or order and as to the regularity of the proceedings of such officer. Under that Section, no doubt the Assistant Collector is vested with the power to call for the record and examine the legality or propriety of the decision or order passed but he can do so provided the officer who passes the order is subordinate to him. In this case, when the T.D.O. has passed the order, it is necessary to examine whether he is subordinate to the Asstt. Collector. According to Mr. Uraizee, the T.D.O. would be subordinate revenue officer for the purpose of Section 211 of the Bombay Land Revenue Code. At this stage, it is necessary to refer to the decision of this Court rendered in the case of DALLUMIYA LALMIYA MALEK VS. STATE OF GUJARAT, 12 G.L.R. 668 wherein it is laid down that in all the inquiries under sec.37(2) of the Bombay Land Revenue Code, even though the inquiry is held by the Mamlatdar to whom the powers of the Collector in this connection are delegated under sec.12, the order would still remain the order of the Collector. Therefore, the appeal against such order under sec. 204 would never lie either to the Prant Officer or to the Collector himself. The principle enunciated in this case mutatis mutandis applies to the case on hand. The powers under Section 65 of the Bombay Land Revenue Code vested in Collector are admittedly delegated to the T.D.O., and therefore, T.D.O. has passed the order. It would, therefore be, the order as if passed by the Collector because the order passed by the T.D.O. would still remain the order of the Collector. The Collector is certainly not the subordinate officer to the Assistant Collector, and therefore, in this case it was not at all open to the Assistant Collector to call for the record and examine the legality or propriety of the decision or order of the T.D.O., who cannot in this case be said to be the subordinate to Asstt. Collector. However, the Asstt. Collector called for the record and passed the order upsetting the order of T.D.O.. The impugned order is therefore illegal in the eye of law and so the same is required to be struck down.

5. At this stage, Mr. Uraizee, learned A.G.P. representing the opponent submits that the matter may be remanded to the Collector or the State Government for a fresh consideration especially when it is found that the Assistant Collector at Dabhoi was not competent to pass

the order in question. I find no substance in the submission for the simple reason that when the authority vested with the power to examine the legality or propriety of any decision has uptill now not thought it fit to examine the legality or propriety of the order in question, it would not be just and proper to remand the matter for fresh consideration. Even otherwise also, I do not find any reason for having a second inning of the same dispute by remanding the matter because the N.A. permission granted by the T.D.O. suffers from no infirmity in the eye of law. In that view of the matter, the petition requires to be allowed. The same is accordingly allowed and order passed by the Assistant Collector at Dabhoi on 15th July, 1994, the copy of which is produced at Annexure "D" is hereby quashed and set aside. No order as to costs in the circumstances of the case. Rule is made absolute to that extent.

sf-hrs